

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
WESTERN DIVISION

UNITED STATES OF AMERICA, ) CR. 13-50133  
 )  
 Plaintiff, ) ORDER GRANTING  
 ) MOTION FOR WITNESS TO  
 vs. ) APPEAR BY VIDEO  
 ) [DOCKET NO. 36]  
 CLAYTON CHARLES HIGH WOLF, )  
 a/k/a CLAYTON CHARLES HIGH )  
 WOLF, JR., )  
  
 Defendant.

Pending before the court are motions to suppress filed by defendant Clayton Charles High Wolf, aka Clayton Charles High Wolf, Jr. On January 17, 2014, the government filed a motion seeking permission for one of its witnesses, Kathryn J. Engle, a Forensic Examiner with the South Dakota State Health Laboratory, to appear and testify by video. The evidentiary hearing on this matter is scheduled for tomorrow, April 16, 2014. Mr. High Wolf has never responded to the government's motion.

The right of confrontation does not apply at suppression hearings. See Francischelli v. Potter, 2007 WL 776760 \*10 (E.D.N.Y. 2007) (citing Washburn v. United States, No. 3:05-cv-774, 2006 WL 3715393 \*4 (N.D. Ind. Dec. 14, 2006) ("[C]ases decided after Crawford v. Washington [541 U.S. 36 (2004)], reaffirm the admissibility of hearsay statements at suppression hearings.")). The Sixth Amendment right to confrontation is a right inuring at trial, not at a pretrial hearing. Pennsylvania v. Ritchie, 480 U.S. 39, 52 (1987).

Although the Confrontation Clause of the Sixth Amendment does not apply at the suppression hearing in this case, the Due Process clause of the Fifth Amendment does apply. However, the court notes that the government's witness will be visible to both Mr. High Wolf and his counsel, her testimony will be audible to both, and she will be subject to cross-examination by Mr. High Wolf's counsel. Mr. High Wolf has been on notice for three months and has never voiced an objection to the government's proposal.

The dictates of Due Process that ensure that a defendant has notice and an opportunity to be heard will not be violated by allowing the government's witness to testify by video. Good cause appearing, it is hereby ORDERED that the government's motion to have Ms. Engle testify by video [Docket No. 36] is granted.

Dated April 15, 2014.

BY THE COURT:

/s/ *Veronica L. Duffy*  
VERONICA L. DUFFY  
UNITED STATES MAGISTRATE JUDGE